UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1992/SR.36/Add.1
2 September 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 36th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 28 August 1992, at 3 p.m.

Chairman: Mr. ALFONSO MARTINEZ

CONTENTS

Organization of work (continued)

Consideration of draft resolutions and decisions (continued)

Consideration of the future work of the Sub-Commission and of the draft provisional agenda for the forty-fifth session of the Sub-Commission

Adoption of the report of the forty-fourth session

Closure of the session

* The summary record of the first part (closed) of the meeting appears as document E/CN.4/Sub.2/1992/SR.36.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-13887/0745K (E)

The public meeting was called to order at 4.40 p.m.

ORGANIZATION OF WORK (continued)

1. Mr. CISSE (Centre for Human Rights) announced that the Secretariat had prepared a "United Nations certificate attesting the status of experts on missions with privileges and immunities thereto" for members and alternates of the Sub-Commission. The identification documents were now available for issue or collection.

2. The CHAIRMAN said that the announcement by Mr. Cisse closed an important chapter in the history of the question of the personal protection of members of the Sub-Commission, remedying an injustice whereby they had been denied the right to a document to which members of other United Nations bodies were entitled.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (agenda item 11) (continued)

Draft resolution E/CN.4/Sub.2/1992/L.39

3. The CHAIRMAN invited Mr. Despouy to inform the experts of the outcome of the informal consultations held on the draft resolution since the closure of the 35th meeting.

4. Mr. DESPOUY said that after intense consultations it had been agreed to remove the two references to "contradictory procedures", by deleting the final sentence in paragraph 4 (a) of the Sub-Commission's draft resolution and in paragraph 2 (a) of the resolution to be forwarded to the Commission on Human Rights. He hoped that the draft resolution could now be adopted by consensus.

5. Mr. CISSE (Centre for Human Rights) announced that the only financial implications of the draft resolution related to Conference Services.

6. Draft resolution E/CN.4/Sub.2/1992/L.39, as amended, was adopted without a vote.

Review of further developments in fields with which the Sub-Commission has been concerned (agenda item 4) (continued)

Draft resolution E/CN.4/Sub.2/1992/L.45/Rev.1

7. Mrs. PALLEY thanked Mrs. Warzazi and Mr. Saboia for their amendments, which had been incorporated into the revised draft resolution. Although one expert apparently felt that the revised draft resolution was still too utopian in its aims, all the sponsors still present in Geneva had accepted the amendments proposed. It was important that the Sub-Commission should translate its discussions of concepts and theories into practice, by addressing the major causes of human rights violations in the real world. One of those causes was clearly the possession and production of arms, since those in possession of arms were more likely to go to war. She thus hoped that the revised draft resolution could now be adopted without a vote.

8. Ms. CHAVEZ said that she still considered that the issue addressed in the draft resolution did not fall within the competence of the Sub-Commission and could more appropriately be addressed by other United Nations bodies with greater expertise in that particular field. Nevertheless, she would not be asking for a vote on the draft resolution.

9. Mr. TIAN Jin felt that the resolution as originally drafted had had little bearing on human rights issues. The revised text was an improvement; nevertheless, he had serious doubts as to the feasibility of implementing some of the recommendations contained therein. His inclination would have been to retain only the recommendations set forth in paragraph 6. However, in the interests of securing consensus, he was willing to accept the revised text.

10. Mr. GUISSE said that every aspect of the issue of arms production and trade was of direct concern to the developing countries, for it could be argued that the more resources they devoted to arms, the fewer resources were available for education. He congratulated Mrs. Palley on her initiative in drafting the resolution, and unreservedly supported all the ideas contained therein.

11. Mrs. WARZAZI said that she had initially been at a loss to know what relevance the laudable but somewhat utopian proposals contained in the draft resolution had to the work of the Sub-Commission. In proposing certain amendments, she had thus tried to make Mrs. Palley's initiative more directly relevant to that work, by linking it more closely to human rights concerns.

12. For many years the developing countries had been calling upon the five permanent members of the Security Council to reduce their arms expenditure, thereby releasing resources for the developing countries. Alas, that call had fallen on deaf ears. Nevertheless, she continued to nurture the long-standing hope that an in-depth study could be conducted on the positive impact on the promotion of human rights of a 10 per cent reduction in world armament expenditure, in terms of new hospitals and schools, vaccination programmes, training of government agents in human rights issues, the creation of basic infrastructures and housing, and so forth. Thanks to Mrs. Palley's initiative, a request to the Secretary-General to prepare such a study was now incorporated in paragraph 6 of the revised draft resolution.

13. The CHAIRMAN said that the revised draft resolution was without administrative or financial implications.

14. Draft resolution E/CN.4/Sub.2/1992/L.45/Rev.1 was adopted without a vote.

CONSIDERATION OF THE FUTURE WORK OF THE SUB-COMMISSION AND OF THE DRAFT PROVISIONAL AGENDA FOR THE FORTY-FIFTH SESSION OF THE SUB-COMMISSION (agenda item 20) (E/CN.4/Sub.2/1992/L.1)

Draft provisional agenda for the forty-fifth session of the Sub-Commission (E/CN.4/Sub.2/1992/L.1)

15. The CHAIRMAN stressed that at its current session the Sub-Commission was required simply to take note of the draft provisional agenda for the forty-fifth session contained in document E/CN.4/Sub.2/1992/L.1. Experts were

of course free to pass comment or make suggestions regarding that draft provisional agenda; however, no substantive decision thereon would be taken until its adoption at the forty-fifth session of the Sub-Commission.

16. Mrs. PALLEY said that, in the context of agenda item 19 (the right of everyone to leave any country, including his own, and to return to his country), Mr. Hakim had pointed out that the Sub-Commission should be dealing with the question of voluntary and involuntary migration, with particular regard to migrant workers. She herself had suggested that agenda item 19 would be an appropriate item under which to deal with the first report on the new study on population transfers. She noted that agenda item 19 had not been included in the draft provisional agenda for the forty-fifth session. She thus proposed that the Sub-Commission should adopt agenda item 19 in the form she had outlined. Item 19 of the draft provisional agenda for the forty-fifth session would accordingly be renumbered item 20.

17. The CHAIRMAN said that he had held discussions with an informal group of "Friends of the Chairman" regarding the form that agenda item 19 might take in the Sub-Commission's future work. That group had made concrete proposals for an updated approach, that would enable the Sub-Commission to review facets of the question that it had been unable to consider in the traditional framework of the agenda item.

18. Mrs. KSENTINI said that she had understood that, when examining the question of impunity and adopting resolution 1992/23 appointing two special rapporteurs to study the question, the Sub-Commission had accepted her proposal that the study should be considered under agenda item 4, rather than under agenda item 10. She requested the Secretariat to amend the draft provisional agenda to take account of her proposed amendment, which was reflected in resolution 1992/23 as adopted.

19. The CHAIRMAN, said that, if there was no objection, he would take it that the Sub-Commission agreed to deal with that topic under item 4 rather than item 10 (e).

20. It was so decided.

21. Mr. HAKIM, supported by Mr. KHALIL, said that, in view of the growing importance of the phenomenon worldwide and the increasing number of human rights violations associated therewith, several experts felt that the subject of "migration, voluntary and involuntary, and migrant workers" should appear as a separate new item on future agendas of the Sub-Commission.

22. Mrs. WARZAZI suggested that the title of the proposed item 5 (b) should be "Monitoring the transition to democracy in South Africa", which would be more in keeping with the angle from which in future the Sub-Commission would be considering the issue.

23. The CHAIRMAN said that the moment might be opportune to inform members of the recommendation of a small group of "Friends of the Chairman" that the title of the proposed new item 19 should be: "The right to stay, leave or return to a country and the situation of displaced persons". The proposed wording would extend the item to cover a whole series of issues, such as for

example the situation of displaced persons and the braindrain which came within the purview of Article 13 of the Universal Declaration of Human Rights but which had hitherto been somewhat neglected.

24. Mrs. ATTAH asked whether the Sub-Commission was being asked to take note of the draft provisional agenda for the next session or to make proposals for inclusion in it.

25. The CHAIRMAN said that the prime purpose of the Sub-Commission was to take note of the draft provisional agenda for 1993 but proposals for inclusion in it could also be discussed. The final decision on the contents of the draft provisional agenda would be the responsibility of the Sub-Commission at the opening meeting of its forty-fifth session in 1993.

26. Mrs. KSENTINI said that she was opposed to Mrs. Warzazi's proposal to change the title of item 5 (b) of the draft provisional agenda. The Sub-Commission did not yet know what the contents of the report of the Special Rapporteur would be; moreover, it was not out of the question that developments in South Africa might be such that the Sub-Commission would be obliged to consider that assistance provided to the South African Government would continue to produce adverse consequences. The item should remain on the agenda as it stood on the understanding that the mandate of the Special Rapporteur was being altered in the light of developments.

27. Mrs. PALLEY said that she was also a "Friend of the Chairman" and that she wished to propose an amendment to the Chairman's proposal which would take account of all the considerations which had been expressed. She therefore proposed that, after "displaced persons" the words "with special reference to all persons involved in migration flows and their consequences for human rights" should be added.

28. Mr. HAKIM said that he was particularly concerned by the very large number of people worldwide who, in very straitened circumstances, had fallen into the category of involuntary migrants. In that connection he cited the case of the "boat-people" in Viet Nam, the 250,000 refugees in his own country and the situation in European countries, notably Germany. He would suggest that the title "Migration, voluntary and involuntary, and migrant workers" should be used.

29. The CHAIRMAN said that it was important not to leave a blank in the draft provisional agenda and a solution to the problem might therefore be to adopt the proposal of Mr. Hakim or another proposal provisionally on the understanding that the issue would be reverted to at the opening meeting of the forty-fifth session.

30. Mrs. DAES said that the documentation under item 14 should include a reference to the second study by the Special Rapporteur.

31. The CHAIRMAN noted that the suggestion of Mrs. Daes involved a simple reference to additional documentation under item 14 and did not therefore constitute a substantive proposal.

32. Mrs. PALLEY requested that the words "voluntary or otherwise" should be added between "migration flows" and "and their consequences for human rights" to her proposed amendment.

33. Mr. DESPOUY said that the "Friends of the Chairman" had used the term "displaced persons" to encompass all those situations which might be the result of leaving a country or remaining within it as a consequence of an involuntary forced situation. An effort had been made to try to cover all those situations in a general formula which would not create any obstacles to approval. The Sub-Commission was currently faced with the non-existence of a text. The "Friends of the Chairman" had kept to the previous text and had expanded it somewhat. The proposed text did not claim to be definitive; it was merely a suggestion for the following year when other issues could be added. There was not sufficient time at the current session to deal with all those matters explicitly.

34. He appealed to members to approve the Chairman's proposal and approach the matter afresh the following year when more mature consideration could be given to the matter.

35. Mr. HATANO considered that the coverage of item 19 should be expanded.

36. Mrs. KSENTINI said that the Sub-Commission clearly needed to give very careful thought to all the implications of any wording it might wish to adopt. She therefore proposed that for the time being a very general title, such as "Freedom of movement", should be used for new agenda item 19, on the understanding that the Sub-Commission would reconsider the matter and decide on the final wording at its next session.

37. The proposal was adopted.

38. Mrs. WARZAZI, reverting to item 5 (b) of the draft provisional agenda, observed that, as already recognized by the General Assembly, the independence of Namibia had brought an end to colonialism in that part of the world. Accordingly, she proposed that the Sub-Commission should update the title of its agenda item by deleting the words "and colonialist" from the phrase "racist and colonialist regime of South Africa".

39. The proposal was adopted.

40. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission now wished to take note of the draft provisional agenda for its forty-fifth session, as amended.

41. It was so decided.

42. The CHAIRMAN said that the Sub-Commission had thus completed its consideration of agenda item 20.

ADOPTION OF THE REPORT OF THE FORTY-FOURTH SESSION (agenda item 21)
(E/CN.4/Sub.2/1992/L.10 and Adds.1-16; E/CN.4/Sub.2/1992/L.11 and Adds.1-6)

43. Mr. BOSSUYT, Rapporteur, said that the Sub-Commission had before it the draft chapters of the report relating to matters on which it had concluded its discussion in time for them to be distributed. However, the delay in completing its work meant that the whole of the draft report could not yet be made available. Since it would be a technical report, he appealed to the understanding and confidence of the members of the Sub-Commission to enable him to prepare the final version, in cooperation with the Secretariat, following the practice adopted at previous sessions. The report would be finalized and approved by the Rapporteur as soon as possible and then transmitted to each member of the Sub-Commission.

44. The CHAIRMAN said that, if he heard no objection, he would take it that, in accordance with established practice, the Sub-Commission wished to entrust the Rapporteur with the task of finalizing the draft report and transmitting it to all the members.

45. It was so decided.

CLOSURE OF THE SESSION

46. After an exchange of courtesies, The CHAIRMAN declared the session closed.

The meeting rose at 6.05 p.m.